

property or the environment; or to activities necessary for valid law enforcement purposes. However, while such activities are not subject to paragraphs (a)(1) through (a)(5) of this §922.184, this paragraph (b) does not exempt the activity from the underlying prohibition or restriction under other applicable laws and regulations (e.g., MMPA, ESA, and CWA).

(c) Any Sanctuary fishery regulations shall not take effect in Hawaii State waters until established by the State Board of Land and Natural Resources.

§922.185 Emergency regulations.

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource, or to minimize the imminent risk of such destruction, loss, or injury, any and all activities are subject to immediate temporary regulation, including prohibition. Before issuance of such regulations the Director shall consult to the extent practicable with any relevant Federal agency and the Governor of the State of Hawaii. Emergency regulations shall not take effect in State waters of the Sanctuary until approved by the Governor of Hawaii.

§922.186 Penalties; appeals.

(a) Pursuant to section 307 of the NMSA, each violation of either of the Acts, or any regulation in this subpart is subject to a civil penalty of not more than \$100,000. Each such violation is subject to forfeiture of property or Sanctuary resources seized in accordance with section 307 of the NMSA. Each day of a continuing violation constitutes a separate violation.

(b) Regulations setting forth the procedures governing the administrative proceedings for assessment of civil penalties for enforcement reasons, issuance and use of written warnings, and release or forfeiture of seized property appear at 15 CFR Part 904.

(c) A person subject to an action taken for enforcement reasons for violation of these regulations or either of the Acts may appeal pursuant to the applicable procedures in 15 CFR Part 904.

§922.187 Interagency Cooperation.

Under section 304(d) of the NMSA, Federal agency actions internal or external to a national marine sanctuary, including private activities authorized by licenses, leases, or permits, that are likely to destroy, cause the loss of, or injure any sanctuary resource are subject to consultation with the Director. The Federal agency proposing an action shall determine whether the activity is likely to destroy, cause the loss of, or injure a Sanctuary resource. To the extent practicable, consultation procedures under section 304(d) of the NMSA may be consolidated with interagency cooperation procedures required by other statutes, such as the ESA. The Director will attempt to provide coordinated review and analysis of all environmental requirements.

APPENDIX A TO SUBPART Q OF PART 922—HAWAIIAN ISLANDS HUMPBACK WHALE, NATIONAL MARINE SANCTUARY BOUNDARY DESCRIPTION AND COORDINATES OF THE LATERAL BOUNDARY CLOSURES AND EXCLUDED AREAS.

Appendix A provides a text and pictorial (see Figures 1-3) description of the Sanctuary boundary with specific lateral closure points and exclusion areas. The lateral extents (bounds) of each boundary area are closed by straight lines defined by at least two points. It may be necessary to extend these lines beyond the defining points to intersect the actual 100 fathom contour or the shoreline. Each point corresponds to a bounds number indicated in Figure 2. Digital files of the Sanctuary boundary (available in three common formats, ESRI Shape File, MapInfo Table, and an ASCII Exchange Format) are available from the Sanctuary office in Kihei, Maui, at the address listed above or by calling (808) 879-2818. These digital geographies are the best available representation of the verbal legal delineation and were derived from: the Hawaiian shoreline as supplied by State of Hawaii through the Office of Planning GIS Office, the NOAA and State of Hawaii agreed upon lateral boundary and exclusion areas, and the 100 fathom isobath digitized from the following 1:80,000 scale NOAA nautical charts-19327—West Coast of Hawaii (9th ED, 4/29/89), 19347—Channels between Molokai, Maui, Lanai, and Kahoolawe (17th ED, 12/13/97), 19351—Channels between Oahu, Molokai, and Lanai (8th ED, 7/01/1989), 19357—Island of Oahu (20th ED, 9/21/1996), and 19381—Island of Kauai (8th ED, 7/17/1993)].

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For the portion of the Lanai region of the HIHWNMS west of Chart 19351, [157°42.8' west] the 100 fathom contour was derived from the 1:250,000 chart 19340—Hawaii to Oahu (24th ED, 1/09/1993).

All digital geography data have been referenced to WGS84 (NAD83) and have been converted to geographic (latitude and longitude) coordinates.

SANCTUARY BOUNDARY

A. As defined by the specific lateral boundaries in B, and except for excluded areas described in paragraph C of this section, the Hawaiian Islands Humpback Whale National Marine Sanctuary consists of the submerged lands and waters off the coast of the Hawaiian Islands seaward from the shoreline, cutting across the mouths of rivers and streams (see Figure 1):

15 CFR Ch. IX (1–11 Edition)

1. To the 100-fathom (183 meter) isobath from Kailiu Point eastward to Mokolea Point, Kauai;

2. To the 100-fathom (183 meter) isobath from Puaena Point eastward to Mahie Point, and from the Kapahulu Groin in Waikiki eastward to Makapuu Point, Oahu;

3. To the 100-fathom (183 meter) isobath from Cape Halawa, Molokai, south and westward to Ilio Point, Molokai; southwestward to include Penguin Banks; eastward along the east side of Lanai; to the waters seaward of the three nautical mile limit north of Kahoolawe, to the Hanamanoia Lighthouse on Maui, and northward along the shoreline to Lipoa Point, Maui;

4. To the deep water area of Pailolo Channel from Cape Halawa, Molokai, to Lipoa Point, Maui, and southward;

5. To the 100-fathom (183 meter) isobath from Upolu Point southward to Keahole Point, Hawaii.

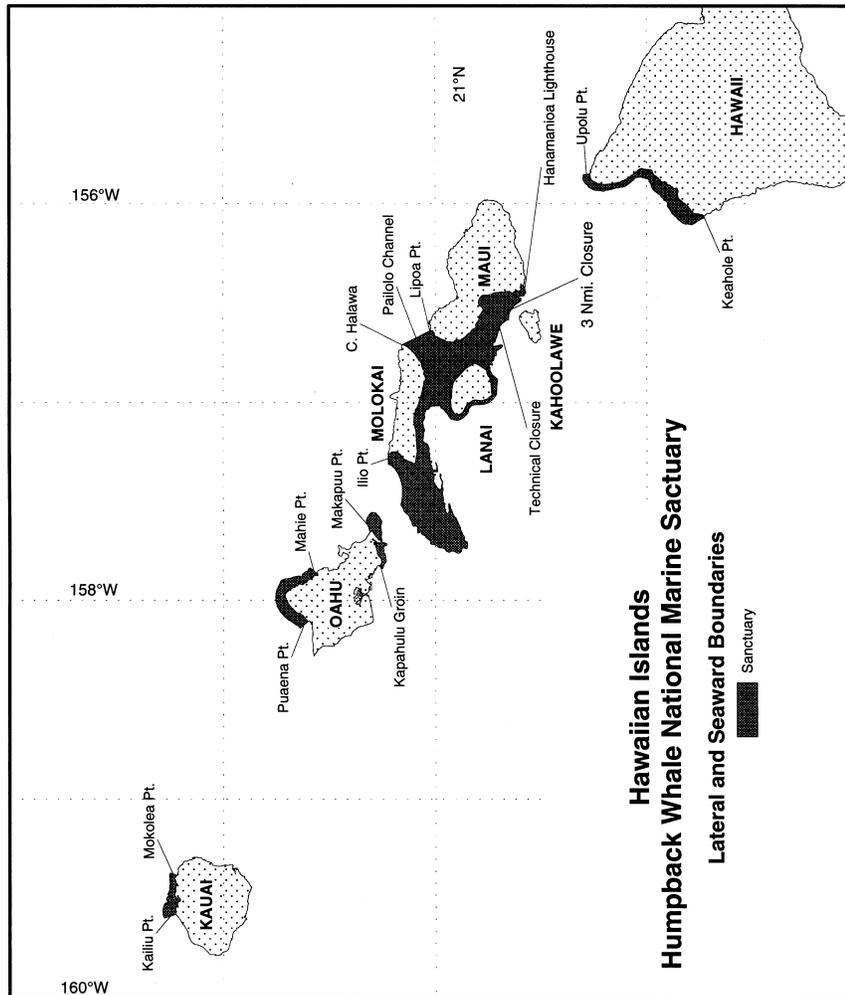


Figure 1

B. Lateral Closure Bounds for the Hawaiian Islands Humpback Whale National Marine Sanctuary Boundary (see Figure 2).

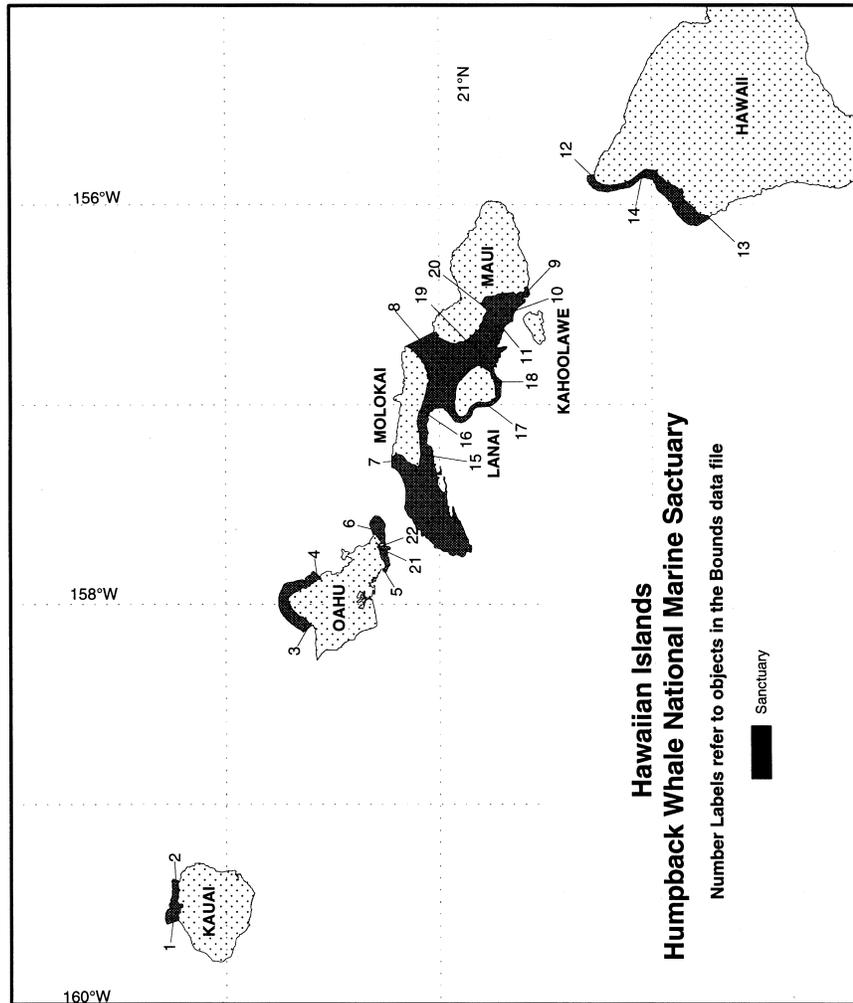


Figure 2

Bound No. (Fig. 2)	Geographic name	No. of points	Latitude	Longitude
1	Kailiu Pt., Kauai	2	22°13'24.7" 22°16'33.5"	-159°34'52.2" -159°35'59.4"
2	Mokolea Pt., Kauai	2	22°13'29.9" 22°14'55.4"	-159°22'55.8" -159°22'19.3"
3	Puaena Pt., N. Oahu	2	21°38'24.6" 21°36'8.4"	-158°8'26.0" -158°6'24.5"
4	Mahie Pt., N. Oahu	2	21°33'37.3" 21°35'32.2"	-157°51'51.9" -157°50'5.5"
5	Kapahulu Groin, S. Oahu	3	21°15'5.7" 21°16'6.1" 21°16'6.2"	-157°50'27.5" -157°49'25.7" -157°49'23.8"
6	Makapuu Pt., S. Oahu	2	21°18'39.6" 21°19'44.7"	-157°38'56.7" -157°35'46.1"
7	Ilio Pt, Molokai	2	21°13'25.7" 21°13'27.0"	-157°18'45.8" -157°15'14.4"
8	Pailolo Channel, C. Halawa to Lipoa Pt.	2	21°1'29.8" 21°9'29.5"	-156°38'22.0" -156°42'37.2"

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Bound No. (Fig. 2)	Geographic name	No. of points	Latitude	Longitude
9	Hanamanoia Lighthouse, Maui	2	20°34'21.8"	-156°26'51.1"
			20°34'58.4"	-156°24'45.2"
10	3 Nmi. closure around Kahoolawe	51	20°35'58.1"	-156°29'32.0"
			20°35'59.9"	-156°29'33.0"
			20°36'3.9"	-156°29'35.5"
			20°36'6.6"	-156°29'36.9"
			20°36'16.3"	-156°29'43.1"
			20°36'25.7"	-156°29'49.9"
			20°36'34.6"	-156°29'57.3"
			20°36'39.9"	-156°30'2.2"
			20°36'43.8"	-156°30'5.5"
			20°36'50.8"	-156°30'12.1"
			20°36'59.0"	-156°30'16.5"
			20°37'58.7"	-156°30'22.7"
			20°37'18.1"	-156°30'29.5"
			20°37'27.0"	-156°30'36.8"
			20°37'35.5"	-156°30'44.8"
			20°37'43.4"	-156°30'53.4"
			20°37'50.9"	-156°31'2.4"
			20°37'56.4"	-156°31'10.0"
			20°37'59.0"	-156°31'13.2"
			20°38'6.0"	-156°31'22.7"
			20°38'8.6"	-156°31'26.8"
			20°38'10.8"	-156°31'29.9"
			20°38'17.2"	-156°31'39.9"
			20°38'18.9"	-156°31'43.0"
			20°38'23.4"	-156°31'48.4"
			20°38'30.3"	-156°31'58.0"
			20°38'36.6"	-156°32'7.9"
			20°38'42.4"	-156°32'18.3"
			20°38'43.4"	-156°32'20.5"
			20°38'46.4"	-156°32'25.9"
			20°38'51.5"	-156°32'36.7"
			20°38'56.0"	-156°32'47.7"
			20°38'59.8"	-156°32'59.1"
			20°39'3.0"	-156°33'10.7"
			20°39'4.0"	-156°33'15.7"
			20°39'4.4"	-156°33'17.0"
			20°39'5.3"	-156°33'21.1"
			20°39'6.8"	-156°33'28.7"
			20°39'8.6"	-156°33'40.7"
			20°39'8.9"	-156°33'44.4"
			20°39'9.7"	-156°33'49.6"
			20°39'10.1"	-156°33'53.8"
			20°39'11.0"	-156°34'0.3"
			20°39'12.1"	-156°34'12.4"
			20°39'12.5"	-156°34'24.4"
			20°39'12.4"	-156°34'25.4"
			20°39'12.6"	-156°34'30.5"
			20°39'12.2"	-156°34'42.6"
			20°39'11.8"	-156°34'47.7"
			20°39'11.7"	-156°34'48.9"
			20°39'11.3"	-156°34'55.8"
11	Technical Cosure	2	20°41'39.2"	-156°37'7.5"
			20°41'45.0"	-156°38'3.6"
	North of Kahoolawe.			
12	Upolu Pt., Hawaii (Big Island)	2	20°16'5.3"	-155°51'0.5"
			20°17'59.9"	-155°51'17.2"
13	Keahole Pt., Hawaii (Big Island)	2	19°43'39.6"	-156°3'42.7"
			19°43'41.5"	-156°4'14.5"

C. Excluded Ports and Harbors Bounds (see Figure 3).

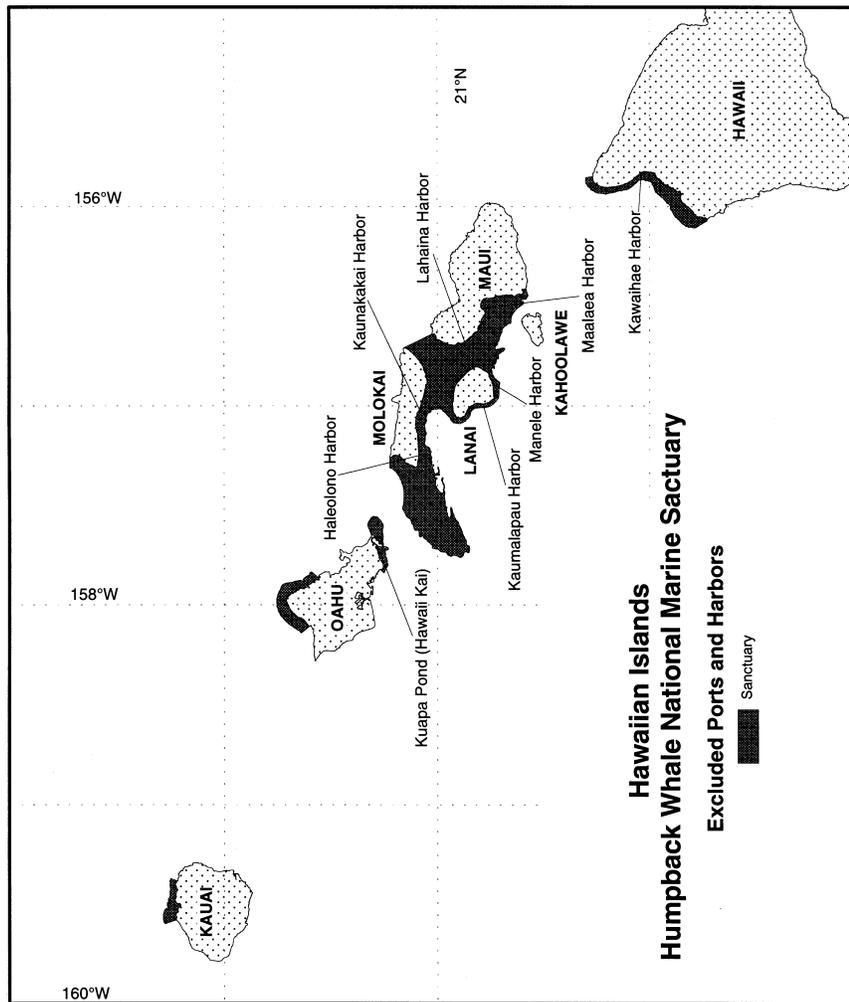


Figure 3

Bound No. (Fig.2)	Geographic Name	No. of Points	Latitude	Longitude
14	Kawaihae Harbor, Big Island exclusion	2	20°2'14.3" 20°2'25.3"	-155°50'2.5" -155°49'57.7"
15	Haleolono Harbor, Molokai exclusion	2	21°5'3.5" 21°5'4.8"	-157°14'58.6" -157°14'55.2"
16	Kaunakakai Harbor, Molokai exclusion	4	21°5'13.9" 21°4'49.2" 21°4'38.5" 21°5'7.4"	-157°1'35.7" -157°1'58.3" -157°1'41.2" -157°1'15.0"
17	Kaumalapau Harbor, Lanai exclusion	2	20°47'9.2" 20°47'1.1"	-156°59'32.2" -156°59'31.3"
18	Manele Harbor, Lanai exclusion	2	20°44'33.2" 20°44'35.2"	-156°53'12.9" -156°53'14.1"
19	Lahaina Harbor, Maui exclusion	2	20°52'18.3" 20°52'18.8"	-156°40'45.0" -156°40'44.0"
20	Maalea Harbor, Maui exclusion	2	20°47'32.1" 20°47'24.8"	-156°30'35.0" -156°30'39.6"

Bound No. (Fig.2)	Geographic Name	No. of Points	Latitude	Longitude
21	Western closure Kuapa Pond (Hawaii Kai), Oahu	2	21°17'7.0" 21°17'6.5"	- 157°43'7.7" - 157°43'7.0"
22	Eastern closure Kuapa Pond (Hawaii Kai), Oahu	2	21°16'53.3" 21°16'51.9"	- 157°42'42.7" - 157°42'40.3"

Subpart R—Thunder Bay National Marine Sanctuary and Underwater Preserve

SOURCE: 65 FR 39056, June 22, 2000, unless otherwise noted.

§ 922.190 Boundary.

The Thunder Bay National Marine Sanctuary and Underwater Preserve (Sanctuary) consists of an area of approximately 448 square miles (1169 square kilometers) of waters of Lake Huron and the submerged lands thereunder, over, around, and under the underwater cultural resources in Thunder Bay. The boundary forms an approximately rectangular area by extending along the ordinary high water mark between the northern and southern boundaries of Alpena County, cutting across the mouths of rivers and streams, and lakeward from those points along latitude lines to longitude 83 degrees west. The coordinates of the boundary are set forth in appendix A to this Subpart.

§ 922.191 Definitions.

(a) The following terms are defined for purposes of Subpart R:

Minor project means any project listed in appendix B to this Subpart.

Programmatic Agreement means the agreement among NOAA, the Federal Advisory Council on Historic Preservation, and the State of Michigan, developed pursuant to the National Marine Sanctuaries Act (NMSA), 16 U.S.C. 1431 *et seq.* and section 106 of the National Historic Preservation Act of 1966 as amended, 16 U.S.C. 470 *et seq.*, which, in part, sets forth the procedures for review and approval of State Permits that authorize activities prohibited by the Sanctuary regulations.

State Archaeologist means the State Archaeologist, Michigan Historical Center, Michigan Department of State.

State Permit means any lease, permit, license, approval, or other authorization issued by the State of Michigan for the conduct of activities or projects within the Thunder Bay National Marine Sanctuary and Underwater Preserve that are prohibited by the regulations at §922.193.

Traditional fishing means those commercial, recreational, and subsistence fishing activities that were customarily conducted within the Sanctuary prior to its designation, as identified in the Final Environmental Impact Statement and Management Plan for this Sanctuary. Copies of the Final Environmental Impact Statement/Management Plan (FEIS/MP) are available upon request to the Marine Sanctuaries Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1305 East-West Highway, 11th Floor, Silver Spring, MD 20910, (301) 713-3125.

Traditional fishing includes tribal fishing rights as provided for in the 1836 Treaty of Washington and subsequent court decisions related to the Treaty.

Underwater cultural resource means:

(1) Any sunken watercraft, including a ship, boat, canoe, skiff, raft, or barge; the rigging, gear, fittings, trappings, and equipment of any sunken watercraft; the personal property of the officers, crew, and passengers of any sunken watercraft; and the cargo of any sunken watercraft, that sank prior to the effective date of Sanctuary designation; and

(2) Any of the above that sinks on or after the date of Sanctuary designation determined to be an underwater cultural resource by the Director pursuant to §922.198. Underwater cultural resource also means any historical remnant of docks or piers or associated material, or materials resulting from activities of historic and prehistoric Native Americans.